

EXHIBIT D

DECLARATION OF RESTRICTIVE COVENANTS

THIS **DECLARATION OF RESTRICTIVE COVENANTS** (this “Declaration”) is made this ____ day of _____ (the “Effective Date”) by LAKE ANNE DEVELOPMENT PARTNERS, LLC, a Virginia limited liability company (together with its successors and assigns, “Owner”) for the benefit of the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, acting in its proprietary capacity, and not in its governmental or regulatory capacity (the together with its successors and assigns, “County”).

RECITALS

WHEREAS, the County conveyed fee simple ownership of that certain real property situated in Fairfax County located in Reston, Virginia[, having Fairfax County Tax Map Numbers [TO BE DETERMINED, PENDING SUBDIVISION, IF AVAILABLE AT TIME OF EXECUTION] and being further described on Exhibit A attached hereto (the “Property”) to Owner on the Effective Date by virtue of that certain Deed Without Warranty or English Covenants recorded amongst the Land Records of Fairfax County, Virginia immediately prior to this Declaration; and

WHEREAS, the County’s conveyance of the Property to Owner was done pursuant to (i) that certain Fairfax County Request for Proposal Number RFP-2000000-125, dated February 9, 2012, and issued under the auspices of the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 et seq. (2012) (such Request for Proposal, as subsequently amended by certain addendums, collectively, the “RFP”), in which the County sought a developer for the redevelopment of the Property to, among other things, achieve a comprehensive redevelopment plan that aligned with the vision of the Fairfax County Comprehensive Plan, including the preservation of existing affordable housing, the creation of additional affordable and workforce housing, and a development that would serve as a catalyst for the revitalization of the area; (ii) Owner’s response to the RFP; and (iii) the resulting Comprehensive Agreement between, among others, the County and Owner, dated as of [DATE], 2015 (the “Comprehensive Agreement”); and

WHEREAS, to ensure the Property is redeveloped in accordance with the terms of that certain Proffered Condition Amendment (PCA A-502 and PCA 502-03 and Development Plan Amendment DPA A-502-07) approved by the County on [DATE], 2015, including the Development Plan described therein (the “Development Plan”) and the terms of the Comprehensive Agreement (such redevelopment, the “Project”), and as a material inducement to the County to convey the Property to Owner, Owner, as the fee simple owner of the Property, desires to and hereby does declare certain restrictive covenants upon the Property, the burdens of which shall run with the Property and the benefits of which shall be in favor of the County in gross.

NOW, THEREFORE, in consideration of \$10.00, the receipt and sufficiency of which is hereby acknowledged, as well as of the County's conveyance of the Property to Owner, Owner hereby declares that the Property is and shall be subject to the restrictive covenants set forth herein (the "Covenants").

1. Intent of the Parties. It is the intent of both Owner and the County that the burdens of these Covenants shall run with the Property and that the benefits of these Covenants shall be in favor of the County in gross.

2. Covenants.

a. Vertical Development on Property. With the exception of that certain parking garage for Building D4, as depicted on Sheet C-6 of the Development Plan, Owner shall not commence or engage in vertical construction in any form on the Property until:

i. Substantial Completion of the Phase I Improvements, as defined on Exhibit B attached hereto (and incorporated herein by this reference), has occurred;

ii. Community Preservation and Development Corporation ("CPDC"), or an affiliate or affiliates thereof, shall have entered into one or more leases for the building sites of Buildings D3 and D4, as described on Sheet C-6 of the Development Plan ("Buildings D3 and D4")[, also known as Fairfax County Tax Map Number[s] [**TO BE DETERMINED, PENDING SUBDIVISION, IF AVAILABLE AT TIME OF EXECUTION**]];

iii. CPDC, or an affiliate or affiliates thereof, shall have entered into one or more contracts for the construction of Buildings D3 and D4;

iv. CPDC or its affiliate, as applicable, shall have issued a notice to proceed under each such construction contract, each of which shall be for, at a minimum, completion of the shell of the applicable building; and

v. Owner shall have sent a notice to County stating Owner's belief that the provisions of Sections 2(a)(i) through 2(a)(iv), inclusive, have been satisfied, together with documentation in support thereof.

b. Permits Generally. Owner shall neither request nor obtain a certificate of occupancy (a/k/a a "Residential Use Permit" for residential units and a "Non-Residential Use Permit" for non-residential spaces, such as offices and retail spaces) for any improvements on the Property until (i) the framing of the first of Buildings D3 and D4 to be constructed is one hundred percent (100%) complete, (ii) the framing of the second of Buildings D3 and D4 to be constructed is at least fifty percent (50%) complete, and (iii) Owner shall have sent a notice to County stating Owner's belief that the provisions of subsections 2(b)(i) and (ii) have been satisfied, together with documentation in support thereof.

c. Permits – After Phase I. Owner shall neither obtain building permits for, nor start nor engage in any construction of, any improvements on the Property other than those in

Phase I of the Project, being those shown on Sheet I-12 of the Development Plan until (i) certificates of occupancy (a/k/a “Residential Use Permits”) have been obtained for every residential unit in both of Buildings D3 and D4, (ii) Owner has obtained binding commitments to acquire Fairfax County Tax Map parcels 17-2 ((8)) 6C; 17-2 ((7)) 6B2; 17-2 ((7)) 6B3; 17-2 ((31)) 1645 and pt of 17-2 ((31)) pt of LARCA common element, in form reasonably acceptable to the County, and such commitments remain in effect at such time Owner wishes to commence construction of post-Phase I improvements, and (iii) Owner shall have sent a notice to the County stating Owner’s belief that the provisions of Sections 2(c)(i) and 2(c)(ii) have been satisfied, together with documentation in support thereof.

d. Completion of Village Road. Owner shall neither obtain nor apply for more than 31 certificates of occupancy (a/k/a “Residential Use Permits”) for residential units on the Property until (i) Owner shall have constructed or caused the construction of the Village Road improvements as shown on Sheet C-8 of the Development Plan and (ii) Owner shall have sent a notice to the County stating Owner’s belief that the provisions of Section 2(d)(i) have been satisfied, together with documentation in support thereof.

e. Demolition of Remaining Existing Apartment Buildings. Owner shall not demolish the two buildings currently existing on the Property with addresses of 1531-1545 (odd numbers only) Cameron Crescent Drive and 1570-1578 (even numbers only) Cameron Crescent Drive (the “Remaining Existing Apartment Buildings”) until (i) certificates of occupancy (a/k/a “Residential Use Permits”) have been obtained for every residential unit in both of Buildings D3 and D4, and (ii) Owner shall have sent a notice to the County stating Owner’s belief that the provisions of Section 2(e)(i) have been satisfied, together with documentation in support thereof.

f. Operation of Remaining Existing Apartment Buildings. Owner shall operate the Remaining Existing Apartment Buildings (i) as affordable housing in accordance with Fairfax County Rental Program’s Admission and Occupancy Policy, last revised October 2011 (and incorporated herein by this reference) and (ii) pursuant to that certain Management Agreement between Owner and CPDC (or an affiliate thereof), of even date herewith (the “Management Agreement”).

g. Relocation of Existing Tenants. Owner shall (i) cooperate with CPDC regarding the relocation of all the tenants of the three buildings currently existing on the Property with addresses of 1513-1527 Cameron Crescent Drive, Reston, Virginia 20190; 1548-1556 Cameron Crescent Drive (even numbers only), Reston, Virginia 20190; and 1560-1566 Cameron Crescent Drive (even numbers only), Reston, Virginia 20190 (collectively, the “Initial Existing Apartment Buildings”) prior to demolition of the Initial Existing Buildings and in accordance with the “Relocation Plan” (incorporated herein by this reference), as specifically set forth in that certain Implementation Agreement between the County and CPDC, dated [DATE], (ii) together with CPDC, relocate all the tenants of the Remaining Existing Apartment Buildings in accordance with the Relocation Plan, and (iii) apply all Net Revenue from the Remaining Existing Apartment Buildings toward such relocation costs. As used in the preceding sentence, “Net Revenue” means the sum of (i) all cash received from rents, lease payments and all other sources, including (A) forfeited tenant security or other deposits, and (B) the proceeds of any condemnation awards or insurance including rental interruption insurance (other than fire and

extended coverage and title insurance, but only to the extent used to restore the Remaining Existing Apartment Buildings), minus (ii) all cash expenditures, capital expenditures, repairs, replacements and all expenses unpaid but properly accrued, including the return of any unforfeited security deposits, which have been incurred in the operation of the Remaining Existing Apartment Buildings.

h. Modification of Land Use Entitlements or Proffers. Owner shall not amend nor otherwise seek written modification or written interpretation of any of (i) the zoning of the Property, (ii) Proffered Condition Amendments PCA A-502 and PCA 502-03, approved by the County on [DATE], 2015, (iii) Development Plan Amendment DPA A-502-07, approved by the County on [DATE], 2015, including the Development Plan described therein, and (iv) the Proffers executed in connection with the entitlements referenced in the preceding clauses (ii) and (iii) (each incorporated herein by this reference; collectively, the “Land Use Entitlements”) without the prior written consent of the County. The County shall respond to any requests for such consent within ten (10) business days.

3. Term. Each of the Covenants shall run with and be binding upon the Property until the earlier of (a) its satisfaction in accordance with its express terms herein, (b) the completion of the Project in general conformance with the Land Use Entitlements (as may be amended in conformance with Section 2(h) hereof), (c) an Automatic Homeowner Termination, as defined in Section 5(a) below and in such case only with respect to the applicable individual residential unit, or (d) January 1, 2050.

4. Estoppels. The County shall, within ten (10) business days after receipt of written request from Owner, deliver a written instrument to Owner or any other person or entity specified by Owner, duly executed and acknowledged, certifying to the best of the County’s knowledge: (a) as to whether this Declaration has been amended or modified, and if so, the substance and manner of such amendment or modification; (b) as to whether Owner is then in violation of any of the terms of this Declaration, and (c) as to whether any particular Covenant identified in the request from Owner has been satisfied in accordance with its express terms herein.

5. Releases.

a. If Owner conveys an individual residential unit – i.e., a single townhouse or residential condominium unit – the construction of which has been completed and for which a certificate of occupancy (a/k/a “Residential Use Permit”) has been issued, in an arms’-length transaction for fair market value to a bona-fide purchaser, then all the Covenants other than those set forth in Section 2(b) and 2(d) above shall automatically terminate solely with respect to such unit, but not otherwise (such a termination, an “Automatic Homeowner Termination”). The term “bona-fide purchaser” as used in this Section 5(a) shall mean one or more individuals, none of whom may hold or have held an interest in more than two (2) individual residential units at the Property.

b. The County agrees to execute a recordable release, in a form reasonably acceptable to the County (a “Release”) with respect to any Covenants (i) that have

been satisfied in accordance with the terms herein or (ii) that are inapplicable to a subdivided portion of the Property. The County shall execute a Release requested by Owner within ten (10) business days after receipt thereof from Owner, with evidence satisfactory to the County, in its reasonable discretion, that the Covenants on the portion of the Property for which the requested Release relates have been satisfied or are inapplicable. Upon satisfaction of all of the Covenants, upon request of Owner, the County shall execute a Release for the Property (or remainder thereof for which Releases have not previously been obtained), in the manner set forth herein.

6. Notices. Any notices or requests required or permitted to be given hereunder shall be deemed to have been properly given when received or refused if sent by United States certified or registered mail, return receipt requested; national overnight courier service; or delivered in hand; in each case as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

If to the County:

Office of Community Revitalization
12055 Government Center Parkway, Suite 1048
Fairfax, Virginia 22035
Attention: Director

With a copy to:

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035
Attention: County Attorney

If to Owner:

Lake Anne Development Partners, LLC
c/o Republic Land Development LLC
11401 North Shore Drive
Reston, Virginia 20190
Attention: Stacy C. Hornstein

With a copy to:

Walsh Colucci Lubeley Emrich & Walsh, PC
2200 Clarendon Boulevard, Suite 1300
Arlington, Virginia 22201
Attention: Thomas J. Colucci, Esq.

7. Miscellaneous.

a. Headings. The section headings are herein used for convenience of reference only and shall not be deemed to vary the content of this Declaration or the terms herein.

b. Incorporation. The Recitals and Exhibits are hereby incorporated into this Agreement as if fully set forth herein.

c. Governing Law. This Declaration shall be governed by and construed under the laws of the Commonwealth of Virginia.

d. Partial Invalidity. If any provision of this Declaration shall be determined to be void or unenforceable by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect; and it is the intention of all the parties hereto that if any provision of this Declaration is capable of two constructions, one of which would render the provision void or unenforceable and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

e. Waiver, Modification. Failure by either party to insist upon or enforce any of its rights hereto shall not constitute a waiver thereof. This Declaration shall not be modified, amended, or altered except by a written agreement signed by each of the parties hereto.

[Remainder of page intentionally left blank. Signatures appear on following pages.]

IN WITNESS WHEREOF, the parties hereto have caused this Declaration to be executed on the Effective Date.

COUNTY:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, acting in its proprietary capacity and not in its governmental or regulatory capacity

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this ____ day of _____, 2015, by
_____.

Notary Public

My Commission Expires: _____
Registration Number: _____

LADP:

**LAKE ANNE DEVELOPMENT PARTNERS
LLC**, a Virginia limited liability company

By: _____
Name: Stacy C. Hornstein
Title:

COMMONWEALTH OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this ____ day of _____, 2015, by Stacy C.
Hornstein, _____ of Lake Anne Development Partners LLC.

Notary Public

My Commission Expires: _____
Registration Number: _____

EXHIBIT A – PROPERTY DESCRIPTION

[TBD – PENDING SUBDIVISION]

EXHIBIT B – PHASE I IMPROVEMENTS

Substantial Completion of Phase I Improvements. With respect to the Phase I Improvements, “Substantial Completion” will have occurred on completion of the following items:

- a. Sanitary sewer mains and manholes are complete and in service with service laterals installed to behind the curb and gutter;
- b. Storm drain mains and manholes are complete and in service;
- c. Storm water management facilities are complete and are placed in service (or ready to be placed in service upon completion of any adjacent construction that will utilize such storm water management facilities);
- d. Water mains are complete and in service with water laterals installed to meter [crocks];
- e. Curbs and gutters are completed;
- f. Paving of the private streets is completed (except for the final topping coarse);
- g. The parking garage of approximately 128 parking spaces has been constructed;
- h. The pad site for Building D3 is complete; and
- i. All areas which are adjacent to the Property where the Phase I Improvements are constructed that were disturbed during construction have been rough graded and stabilized.

Owner’s architect/engineer (or that of Owner’s affiliate, if such affiliate holds the contract with such architect/engineer) for the Phase I Improvements shall have delivered to Owner (or its affiliate), with a copy to the County, a letter, in a form reasonably satisfactory to Owner (or its affiliate) and the County, certifying that Substantial Completion under the contract document(s) has occurred.